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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4099 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and  
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.
2. To be referred to the Reporter or not?-Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

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VISNUBHAI MANIBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR H.B. SHAH, Advocate, with Mr.B.S. Patel,  
Advocate, for Petitioners

Mr.S.N. Shelat, Additional Advocate General, with  
Mr.Kamal M. Mehta, Assistant GOVERNMENT PLEADER,  
for the Respondents.

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CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and  
MR.JUSTICE M.S.SHAH

Date of decision: 11/12/97

ORAL JUDGEMENT : (Per K. Sreedharan, C.J.)

Rule. With the consent of the parties, the matter is taken up for final disposal today.

Petitioners, three in number, challenge Notification dated 22.4.1997 issued by the State Government under Chapter VII-A of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "The Act"), whereby management and administration of Shri Kalika Mataji Temple, situated at the top of Pavagadh Hill, near Champaner in Halol Taluka of Panchmahals District has been taken over.

Petitioners are public spirited persons, interested in protecting Kalika Mataji Temple by initiating this proceeding as Public Interest Litigation. It is their case that thousands of pilgrims visit the temple and perform rituals. The temple is an ancient one. The present Pujari of the temple claimed ownership over it and tried to appropriate its income. By a decision in Charity Commissioner v. Balashanker Mahashanker Bhattji and others, reported in 1992(2) GLH 596, this Court declared the temple as a "Public Trust", as defined by Section 2(13) of the Bombay Public Trusts Act, 1950. The decision of this Court has been upheld by the Apex Court in the decision in Balashanker Mahashanker Bhattji and others v. Charity Commissioner, reported in AIR 1995 SC 167. Subsequently, respondent No.2, the Charity Commissioner, filed Civil Suit No.2 of 1994, on the file of the District Court, Panchmahals at Godhra for appointment of Commissioner for the management of the temple. District Court appointed a practising Advocate as Receiver. The order appointing Receiver was challenged before this Court without success. Suit in the District Court is one for framing scheme for the Trust. Now, invoking the powers under Section 56C of the Public Trusts Act, 1950, Government has declared the temple as a Public Trust for the purpose of provisions contained in Chapter VII-A of the Act. Pursuant to that Notification dated 22.4.1997, Government directed the Collector to take steps for presentation of the application for registration of the Trust before the Assistant Charity Commissioner and for ancillary matters, authorising him to take all necessary steps. According to the petitioners, as per the provisions contained in Article 26 of the Constitution, religious denomination, which has established and maintained the temple, has got the right to administer the same and Government, under the cover of Notification dated 22nd April, 1997, cannot take over its administration. By the decision of the Apex Court in Balashanker (supra), Shri Kalika Mataji

Temple has become a public trust and the religious denomination, to which that Trust belonged, has got the right to manage its own affairs without any interference by the Government. Chapter VII-A of the Act cannot have any application to this temple, which is a public trust. Invoking the powers contained in Chapter VII-A, it is contended, respondents cannot take over its administration from the Trustees.

On behalf of the respondents, an Under Secretary in the Legal Department has filed affidavit dated 12.11.1997. The contentions taken therein are to the following effect :-

Shri Kalika Mataji Temple is a Public Temple. Petitioners have no right to manage the same. As per the Notification dated 22.4.1997, the Temple will have a better management. Chapter VII-A of the Act is a special provision in respect of religious and charitable institutions. As per Section 56C of the Act, State Government is empowered to publish list of endowments registered or declared to be public trusts. Apex Court has decided Shri Kalika Mataji Temple as a "Public Trust", coming within the purview of the Act. Pursuant to the decision of the Apex Court, Government have taken a decision to treat the temple as a public trust under Chapter VII-A for its better administration. The temple belongs to the Government and the Government is the best Trustee to safeguard the interest of beneficiaries. A Managing Committee will be constituted in accordance with law. Charity Commissioner filed a civil suit for framing scheme for the Trust. The District Court appointed a Receiver. Now, the Government has exercised its power under Section 56C of the Act and, therefore, there is no need to have any scheme framed for the management of the temple. In this view, it is stated that the Notification is proper and the same is not to be interfered with.

The fact that Shri Kalika Mataji Temple, situated at the top of Pavagadh Hill near Champaner in Halol Taluka, is a public trust is beyond controversy. It has been held by the Apex Court in Balashanker (supra). According to the petitioners, the said declaration will compel the Trustees to conform to the provisions contained in the Act. The Trust cannot be treated as one falling within the purview of Chapter VII-A of the Act. Consequently, it is contended that the Notification dated 22.4.1997, declaring the Trust to be a "Public Trust", coming within the purview of Chapter VII-A of the Act, is illegal.

The short question that arises for consideration is whether Shri Kalika Mataji Temple in Halol Taluka can be considered as a 'Trust', coming within the purview of Chapter VII-A of the Act. Chapter VII-A provides for special provision in respect of religious and charitable institutions and endowments, which vest in or the management of which vests in the State Government. The title to that Chapter makes it clear that the provisions contained therein can apply only to religious and charitable institutions, which have become vested in or the management of which vests in the State Government. Learned Additional Advocate General, appearing in the case, did not advance any argument to the effect that

the management of which vests in the State Government. According to the learned Additional Advocate General, by the impugned Notification issued under Section 56C of the Act, the Public Trust would become one vested in Government. Thereupon, the argument proceeds, the Government have the power to appoint Committee for the management of the Temple.

For a proper understanding of the scope and ambit of Section 56C of the Act, we read the same :-

"56.C (1) The provisions of this Chapter shall apply to every temple, mosque or endowment created for a public religious or charitable purpose (hereinafter in this Chapter referred to as "the endowment"), which vests in, or the management of which vests in, the State Government and which-

(a) has been registered under the provisions of this Act as, or

(b) is declared by the State Government by notification, in the Official Gazette, after such inquiry as it thinks fit, and after previous publication, to be a public trust.

On such declaration such endowment shall be deemed to be a registered public trust for the purposes of this Act and the provisions of Chapter IV relating to the registration of public trusts, shall, as far as may be, apply to the making of entries in the register kept under section 17, provided that such entries shall also conform to the provisions of this

Chapter. The entries so made shall be final and conclusive.

(2) The State Government shall, as soon as may be after the commencement of this Chapter, publish in the Official Gazette a list of such endowments as are registered as, or declared to be, public trusts; and the State Government may, by like notification and in like manner, add to or delete from such list any endowment entered therein."

For a Public Trust / endowment to fall within the purview of Chapter VII-A, as per this Section, it should satisfy the following cumulative conditions :-

- (1) Endowment, which may be a temple, mosque or endowment created for a public religious or charitable purpose, should be one vested in or the management of which vests in the State Government; and
- (2) Such an endowment should have been registered under the provisions of this Act or is declared by the State Government by Notification in the Official Gazette to be a Public Trust.

In other words,

- (i) only an endowment, which has become vested in the Government or the management of which vests in Government, can come within the purview of Chapter VII-A, if that endowment has been registered under the Act or has been declared by the Government to be a public trust;
- (ii) Registration under the Act or declaration as a public trust by the Government must be in relation to an endowment, which is vested in or the management ...

Government;

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- (iii) Provisions of Chapter VII-A cannot be made applicable to any Trust, which does not satisfy both the above conditions.

If Shri Kalika Mataji Temple is not one vested in Government or the management of which is not vested in the Government, provisions of Chapter

VII-A cannot apply to it.

Chapter VII-A was added to the Act by the amending Act of 1960, after a lapse of 10 years from the date of commencement of the parent Act of 1950. The Objects and Reasons of introducing Chapter VII-A to the Act, as discernible from Bombay Government Gazette, Part V, dated 29.10.1969, are the following :-

"... In several Indian States which merged into the State of Bombay there were religious institutions like temples, masjids, pirs and dargas, which were managed by the Governments of the said State either as State institutions or as public institutions. Some of them were taken over on account of mismanagement. In some such States, there were certain charitable funds held by such States. Since the merger of these Indian States, the said religious institutions and funds are held by or as the case may be, are under the management of the State Government. As some of the provisions of the Bombay Public Trusts Act, 1950, are not suitable for the administration of the said institutions and funds, it is proposed to insert a special Chapter in the said Act, providing for the administration of the said institutions and funds...."

Seeing the above Objects and Reasons for introducing Chapter VII-A, it can safely be held that the provisions contained therein can apply only to such of those endowments, which have become vested or the management of which vests in the State Government. Trusts, which are not so vested or the management of which is not vested with the Government, cannot come within the purview of Chapter VII-A.

Learned Additional Advocate General advanced an argument that provisions of Chapter VII-A are applicable to three types of Public Trusts :-

- (1) Endowments, which have become vested in or the management of which vests in the Government;
- (2) Endowments, which have been registered under the provisions of the Bombay Public Trusts Act;

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- (3) Public Trusts, declared by the Government by Notification to be public trusts.

If a Trust satisfies any of these conditions, it can safely come within the ambit of Chapter VII-A of the Act. According to the learned Additional Advocate General, Shri Kalika Mataji Temple has been found to be a public trust by the Apex Court. Now, Government, by the impugned Notification, declared the said public trust as such under Section 56C of the Act. Therefore, Shri Kalika Mataji Temple falls within Chapter VII-A of the Act. In support of this argument, learned Additional Advocate General contended that the word 'and' in the last part of sub-section (1) of Section 56C should be read as 'or'. For the proposition that in interpreting statutes, words 'and' or 'or' can be interchanged to give effect to the Legislative intent, reliance was placed on the decisions in *Ishwar Singh Bindra and others v. State of U.P.*, AIR 1968 SC 1450 and *The Joint Director of Mines Safety v. M/s. Tandur & Nayandgi Stone Quarries (P) Ltd.*, AIR 1987 SC 1253. In understanding the true scope and ambit of Section 56C in Chapter VII-A, the Objects and Reasons in bringing out the amendment to incorporate Chapter VII-A throw sufficient light. The Objects and Reasons make it clear that Chapter VII-A was meant for those endowments, which vest in or the management of which vests in the State Government. The amendment was not for controlling the activities of endowments of other types. If the intention of the Legislature is thus clear, the word 'and' seen towards the end of sub-section (1) is not to be read as 'or'. It has to be understood as conjunctive. Only such type of endowments, which vest in or the management of which vests in Government, can come within the purview of Chapter VII-A on its satisfying one of the two conditions, viz., a registration under the provisions of the Act or declaration by the Government as public trust. An endowment, which has not vested in the Government or the Management of which has not vested in Government, cannot be brought within the purview of Chapter VII-A. In this view of the matter, the attempt made by the Government by issuing the Notification, declaring Shri Kalika Mataji Temple as a public trust, within the provisions of Chapter VII-A cannot be sustained. Nor can the Government, pursuant to that Notification, appoint a Committee to manage the affairs of the said temple. The approach made by the Charity Commissioner to the Civil Court for framing a scheme for the management of the affairs of the Temple was the proper one. Instead of

pursuing that matter, Government was clearly in error in trying to invoke the provisions of Chapter VII-A after the decision of the Apex Court in Balashanker, AIR 1995 SC 167 (supra).

The above discussion leads to the conclusion that Government Notification dated 22.4.1997, declaring Shri Kalika Mataji Temple to be a public trust for the purpose of provisions of Chapter VII-A of the Bombay Public Trusts Act, 1950, is unsustainable. The direction given to the Collector of Panchmahals, Godhra, to take further steps for the management of the affairs of the temple as representative of the State is also ill-conceived. We quash the Notification and the direction given to the Collector on 22.4.1997. Any further action taken by the authorities pursuant to Notification dated 22.4.1997 will also stand quashed.

Writ Petition is allowed in the above terms.  
Rule is made absolute. We make no order as to costs.

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(apj)